

Appendix D
MAINTENANCE SERVICES AGREEMENT To (the "Contract")
DIR-TSO- 2687

CONVERGEONE, INC.

GENERAL CONDITIONS OF MAINTENANCE SERVICES
(PARTNER SUPPORT SERVICES VERSION)

1. ORDER FORM; PROVISION AND SCOPE OF MAINTENANCE SERVICES.

1.1 Order Form and Provision of Maintenance Services. CONVERGEONE, INC. will provide the Maintenance Services for Supported Products (as hereinafter defined) or Supported Systems (as hereinafter defined) at Supported Sites (as hereinafter defined), as described further in this Agreement and in a **Statement of Work** ("Statement of Work" or "Scope of Work" or "SOW") that references this Agreement. Subject to the terms and conditions of DIR Contract No. DIR-TSO-2687, in the event of a conflict between the terms of the DIRC contract, provisions of the SOW and the terms and provisions of this Agreement, DIR Contract No. DIR-TSO-2687 shall prevail. **"Supported Products"** are (i) Products identified on the Order Form; and (ii) Added Products (as defined in Section 1.8). Supported Products may include non-Avaya Products to the extent that such Products are specified on the Order Form. **"Supported Systems"** are a group of Products or networks that are specified on the Order Form. **"Supported Sites"** are locations that are specified on the Order Form. Supported Products and Supported Systems, collectively, are referred to herein as **"Maintained Products."** Order Forms are subject to acceptance by CONVERGEONE, INC.. CONVERGEONE, INC. may accept an Order Form by beginning to perform the Maintenance Services that are described on such Order Form.

1.2 Monitoring. CONVERGEONE, INC. may electronically monitor Supported Products and Supported Systems for the following purposes: (i) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) to assess Customer needs for additional Products and/or Maintenance Services; and (v) as otherwise provided in the SOW.

1.3 Error Correction. Some Maintenance Services options may include correction of Errors. An **"Error"** means a failure of a Supported Product to conform in all material respects to the manufacturer's specifications that were applicable when the Supported Product was originally purchased or originally licensed, as the case may be.

1.4 Help Line Support. Where the Maintenance Services include help line support, CONVERGEONE, INC. will provide such help line support (e.g., service hours and target response intervals) in accordance with that which is indicated on the Order Form or the SOW.

1.5 Updates. Where the Maintenance Services include the provision of Updates, CONVERGEONE, INC. will make available to Customer such Updates as the manufacturer makes such Updates available to CONVERGEONE, INC.. An **"Update"** is a change in software that

typically provides maintenance correction only. An Update typically is designated as a change in the digit to the right of the second decimal point (e.g., n.y.[z]). CONVERGEONE, INC., at its option, will determine how to provide an Update (e.g., via a website, email, U.S. Mail, etc.). Updates may be remotely installed by CONVERGEONE, INC. (or its subcontractor) or delivered to Customer for Customer to install.

1.6 End of Support. CONVERGEONE, INC. may discontinue or limit the scope of Maintenance Services for Supported Products that Avaya or any other manufacturer has declared "end of life," "end of service," "end of support," "manufacture discontinue," or any similar designation (**"End of Support"**). Customer may access Avaya's user support website (www.support.avaya.com) for End of Support notifications. End of Support will be effective as of the date indicated in the End of Support notice. Alternatively, Avaya may provide End of Support notices by email to email addresses that Customer has registered with Avaya. If Maintenance Services are discontinued for a Supported Product, the Supported Product will be removed from the Order Form and the Fees will be adjusted accordingly. For certain Products subject to End of Support, CONVERGEONE, INC. may continue to offer a limited set of Maintenance Services (**"Extended Support"**). Where CONVERGEONE, INC. chooses to provide such Extended Support, the description of such Extended Support and the Fees associated therewith will be available at the time of CONVERGEONE, INC.'s notice. These notices will communicate information such as Extended Support eligibility, Extended Support alerts related to parts shortages, and end of Maintenance Services (including Extended Support) eligibility.

1.7 Replacement Hardware. Hardware that CONVERGEONE, INC. will provide as part of the Maintenance Services ("Replacement Hardware") may be new, factory reconditioned, refurbished, remanufactured, or functionally equivalent. Replacement Hardware, if not new, will be warranted the same as new hardware and will be equivalent to new in its performance. Returned hardware that has been replaced by CONVERGEONE, INC. will become CONVERGEONE, INC.'s property. CONVERGEONE, INC. represents and warrants that all Replacement Hardware will be free of defects in design, materials, and workmanship. In addition, if CONVERGEONE, INC. is not the manufacturer of such Replacement Hardware, CONVERGEONE, INC. will make available to Customer all warranties provided by the manufacturer for such Replacement Hardware.

1.8 Added Products. If Customer acquires additional products of the same type and manufacturer(s) as the existing Supported Products (**"Added Products"**) and locates such Added Products with existing Supported Products at a Supported Site, the Added Products will be added to the Order Form automatically at CONVERGEONE, INC.'s then current fees as of the date on which the Added Products are first co-located with the Supported Products and for the remainder of the Term (as hereinafter defined). Added Products purchased from a party other than CONVERGEONE, INC. are subject to certification by CONVERGEONE, INC. at CONVERGEONE, INC.'s then current certification rates. If an Added Product fails certification, CONVERGEONE, INC. may choose not to add such Added Product as a Supported Product.

1.9 General Limitations. Unless the SOW provides otherwise, CONVERGEONE, INC. will provide Maintenance Services for software for only the unaltered current release of such software and the prior release of such software. The following items are included in the Maintenance Services only if the SOW specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than CONVERGEONE, INC. (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures or power surges); and (vii) Maintenance Services for Supported Products that have been misused, used in breach of the terms and provisions of their respective license, improperly installed or configured, or that have had their serial numbers altered, defaced, or deleted.

2. INVOICING AND PAYMENT. Pricing shall be in accordance with rates set forth in Appendix C of DIR Contract No. DIR-TSO-2687-TSO-2687. Invoicing and Payment shall be in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2687.

As per Section 151.309. Texas Tax Code, governmental Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, governmental Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (i).

3. CUSTOMER RESPONSIBILITIES.

3.1 General. Customer will cooperate with CONVERGEONE, INC. as reasonably necessary for CONVERGEONE, INC.'s performance of its obligations, including things such as (i) providing CONVERGEONE, INC. with full, free, and safe access to Customer's facilities; (ii) providing telephone numbers, network addresses, and passwords necessary for remote access; and (iii) providing interface information for Supported Products and necessary third party consents and licenses to access such Supported Products. The foregoing three (3) items will be provided by Customer at Customer's expense. If CONVERGEONE, INC. provides an Update or other new release of software as part of the Maintenance Services, Customer will implement it promptly.

3.2 Provision of Supported Products and Supported Systems. Customer will provide all Supported Products, Supported Systems, and Supported Sites. Customer continuously represents and warrants that (i) Customer is either the owner of, or is authorized to access and use, each Supported Product, each Supported System, and each Supported Site; and (ii) CONVERGEONE, INC., its suppliers, and its subcontractors are authorized to do the same to the extent necessary to provide the Maintenance Services in a timely manner.

3.3 Moves of Supported Products. When Customer seeks to move any Supported Product, Customer will notify CONVERGEONE, INC.. Only CONVERGEONE, INC. or its authorized agent may move Supported Products. CONVERGEONE, INC. may charge additional amounts to recover additional costs incurred in providing the Maintenance Services as a result of Supported Products that have been moved by a party other than CONVERGEONE, INC. or its authorized agent.

3.4 **Vendor Management.** Where CONVERGEONE, INC. is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors ("**Vendor Management**"), Customer will provide to CONVERGEONE, INC. a letter of agency or similar document, in a form that is reasonably satisfactory to CONVERGEONE, INC., that authorizes CONVERGEONE, INC. to perform the Vendor Management. Where the third party vendor's consent is required for CONVERGEONE, INC. to be able to perform the Vendor Management in a timely manner, Customer will obtain the written consent of the third party vendor and will provide to CONVERGEONE, INC. a copy of such written consent.

3.5 **Third Party Hosting.** In the event that one (1) or more network address(es) to be monitored by CONVERGEONE, INC. are associated with systems owned, managed, and/or hosted by a third party service provider ("**Host**"), Customer will (i) notify CONVERGEONE, INC. of the Host prior to commencement of the Maintenance Services; (ii) obtain Host's advance written consent for CONVERGEONE, INC. to perform the Maintenance Services on Host's computer systems and will provide to CONVERGEONE, INC. a copy of the consent; and (iii) facilitate necessary communications between CONVERGEONE, INC. and Host in connection with the Maintenance Services.

3.6 Intentionally Left Blank.

3.7 **Maintained Products.** Customer will not remove any identification tags or other markings on any Maintained Product.

4. TITLE AND RISK OF LOSS.

Title to the Maintained Products will have passed to Customer pursuant to the terms and provisions of a separate agreement under which Customer originally obtained the Maintained Products. Title to Replacement Hardware that has been provided as part of the Maintenance Services will pass to Customer upon acceptance. Customer will bear the risk of loss, theft, destruction, or damage to the Maintained Products (each, a "Loss"), and Customer will promptly provide to CONVERGEONE, INC. written notice of any Loss that occurs.

5. **SOFTWARE LICENSE.** Where the Maintenance Services include providing patches, Updates, or feature upgrades for Supported Products ("**New Software**"), New Software will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original software for which the patch, Update, or feature upgrade is provided. Where there is no existing license for the original software, New Software will be provided subject to the manufacturer's then current license terms and restrictions for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the end user license agreement accompanying such components, whether the terms and conditions of the end user license be in "shrinkwrap," "clickwrap," or some other form.

6. **CONFIDENTIAL INFORMATION.** "**Confidential Information**," except as required by the Texas Public Information Act, means either Party's business and/or technical information, information concerning employees, and any other information or data, regardless of whether such information is in tangible, electronic, or

other form, if it is marked or otherwise identified in writing as confidential or proprietary. Information communicated verbally will qualify as Confidential Information if it is designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential Information does not include materials or information that (i) is generally known by third parties as a result of no act or omission of the receiving Party; (ii) subsequent to its disclosure, it was lawfully received from a third party having the right to disseminate the information without restriction on disclosure; (iii) was already known by the receiving Party prior to receiving it from the other Party and it was not received from a third party in breach of that third party's obligations of confidentiality; (iv) was independently developed by the receiving Party without use of Confidential Information of the disclosing Party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent ordered, and provided that the receiving Party provides to the disclosing Party written notice of the pending disclosure prior to any disclosure of Confidential Information pursuant to this subsection (v). Each Party will protect the confidentiality of all Confidential Information received from the other Party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Except as permitted in this Section or for the purpose of performing its obligations under the terms and provisions of this Agreement, neither Party will use or disclose the other Party's Confidential Information. The confidentiality obligations of each Party will survive the termination of this Agreement. Upon termination of this Agreement, each Party will cease all use of the other Party's Confidential Information and will promptly return (or, at the other Party's request, destroy, if authorized by applicable records retention laws and policies) all Confidential Information in tangible form and all copies of Confidential Information in that Party's possession or under its control. In addition, to the extent authorized by applicable record retention laws and policies, each Party will destroy all copies of the other Party's Confidential Information that it has on its computers, disks, and other digital storage devices. Upon request, a Party will certify in writing its compliance with the terms and provisions of this Section.

7. **REPRESENTATIONS AND WARRANTIES.** CONVERGEONE, INC. represents and warrants to Customer that the Maintenance Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of this Agreement. If the Maintenance Services have not been so performed and if within thirty (30) days after the performance of the Maintenance Services Customer provides to CONVERGEONE, INC. written notice of such non-compliance, then CONVERGEONE, INC., at its option, will re-perform the Maintenance Services, correct the deficiencies, or render a prorated refund based on the original charge for the deficient Maintenance Services. The warranty remedies expressly provided in this Section will be Customer's sole and exclusive remedies for breach of warranty claims only. EXCEPT AS REFERENCED AND LIMITED IN THIS AGREEMENT, NEITHER CONVERGEONE, INC. NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH

RESPECT TO THE MAINTENANCE SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE MAINTENANCE SERVICES WILL RENDER A SUPPORTED PRODUCT OR SUPPORTED SYSTEM SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONVERGEONE, INC. DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. **LIMITATION OF LIABILITY.** Limitation of Liability will be handled in accordance to Appendix A, Section 10.K of DIR Contract No. DIR-TSO-2687.

9. **DISPUTE RESOLUTION** Dispute Resolution shall be conducted pursuant to Appendix A, Section 11.A of DIR Contract DIR-TSO-2687.

10. **TERM AND TERMINATION.** Unless a different term is specified on the Order Form, CONVERGEONE, INC. will provide the applicable Maintenance Services for a term ("Term") of one (1) year, which will begin on the Effective Date.

Following the expiration of the Term, Maintenance Services may be renewed for successive one (1)-year periods at the rate that is in effect under the Pertinent Order Form for each respective Supported Product, upon 30 days advance written notice from Vendor to Customer, with Customer concurrence unless at least thirty (30) days prior to the expiration of the Term or the applicable renewal term either Party provides to the other Party written notice of its intent not to renew.

If Maintenance Services are terminated within thirty (30) days after commencement of a renewal term: No termination fee;

If Maintenance Services are terminated during the applicable warranty period for the Supported Product and Maintenance Services have not commenced: The amount due for Maintenance Services for six (6) months; and

If Maintenance Services are terminated at any other time: The lesser amount due for Maintenance Services for (i) Twelve (12) months; or (ii) The remaining term for which the Maintenance Services were to be provided.

Termination shall be in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-2687.

11. MISCELLANEOUS.

(a) **Merger** – DIR Contract No. DIR-TSO-2687 and this Agreement constitute the entire agreement between CONVERGEONE, INC. and Customer with respect to the subject matter described herein, superseding all prior and contemporaneous correspondence and understandings between the Parties, whether written or verbal. No provision of this Agreement shall be deemed waived, amended, or modified by either

Party unless such waiver, amendment, or modification is in a writing that is signed by the Party against whom enforcement is sought.

(b) **No Assignment** - Assignment shall be handled in accordance with Appendix A, Section 4.D. of the DIR Contract No. DIR-TSO-2687.

(c) **Notices** - Notices shall be in accordance with Appendix A, Section 12.A. of DIR Contract No. DIR-TSO-2687.

(d) **Acknowledgment and Authority** - By execution hereof, the signer hereby certifies that he/she has read this Agreement and these terms, understands them, and agrees to all terms and provisions stated herein. In addition, CONVERGEONE, INC. and Customer represent and warrant to each other that each respective Party has the full right, power, and authority to execute this Agreement.

(e) **Publicity** - Neither Party shall use the name(s), trademark(s), or trade name(s), whether registered or not, of the other Party in publicity releases or advertising or in any other manner without the prior written consent of such other Party. Each Party agrees that it will not, without the prior written consent of the other Party, make any public statement. **Independent Contractors** - The Parties acknowledge that Customer is a Party independent from CONVERGEONE, INC. and that nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, principal and agent, or any relationship other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and provisions of this Agreement.

(f) **Waiver** - If either Party fails to enforce any right or remedy available under this Agreement, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other Party.

(g) **Force Majeure** - Force Majeure shall be handled in accordance with Appendix A, Section 11.C of the DIR Contract No. DIR-TSO-2687.

STATE OF TEXAS – 12-22-2011